

## ORDINANCE NO.

AN ORDINANCE GRANTING A FRANCHISE TO INSIGHT COMMUNICATIONS COMPANY, L.P., ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF WESTFIELD, INDIANA, AND BE IT ORDAINED BY THE TOWN COUNCIL OF WESTFIELD, INDIANA, AS FOLLOWS:

**SECTION 1. SHORT TITLE.**

This Ordinance shall be known, and may be cited as the "Town of Westfield Cable Television Franchise Ordinance."

**SECTION 2. DEFINITIONS.**

For the purpose of this Ordinance, the following terms, words and their derivations shall have the meaning given herein. Where not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Town" is the Town of Westfield, Indiana.
2. "Company" is the grantee of rights under this Franchise, specifically, Insight Communications Company, L.P.
3. "Town Council" is the Town Council of Westfield, Indiana.
4. "Person" is any person, firm, partnership, association, corporation or organization of any kind.
5. "Cable Television System" means a system of coaxial cables, wave guides, or other conductors and equipment for the reception, amplification and distribution of television, radio or other signals to subscribing members of the public for a fee.
6. "FCC" is the Federal Communications Commission.
7. "Gross subscriber revenue" shall include all compensation paid by a subscriber for the sale of the Company's monthly basic television services. This does not include revenue derived from paid TV program charges, leased channels, Pay-TV service, nor does it include any sales or excise tax.

### SECTION 3. GRANT OF AUTHORITY.

(a) There is hereby granted by the Town to the Company the privilege to construct, erect, operate and maintain a cable television system for the reception, amplification and distribution of video and/or audio signals to subscribing members of the public for a fee, for a period of Fifteen (15) years from and after the effective date of this Ordinance with an option to renew for an additional Five (5) years.

(b) The Company is hereby granted by the Town, the privilege to construct, operate, and maintain said cable television system in, upon, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated within the corporate limits of Westfield and all extensions thereof, and additions thereto, in the Town.

(c) The right to use and occupy said streets, alleys, public ways and places for the purpose herein set forth shall not be exclusive and the Town reserves the right to grant a similar use of said streets, alleys, public ways and places to any person at any time during the period of this Franchise.

### SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

(a) The Company shall, at all times during the life of this Franchise, be subject to all lawful exercises of police power of the Town.

(b) The Company agrees to comply with all valid local, state and federal regulations, including the rules and regulations of the FCC.

### SECTION 5. INDEMNIFICATION.

The Company shall indemnify, protect and save the Town harmless from and against any and all losses, costs or expenses resulting from damage to any property or bodily injury or death to any person, including payments made under any workmen's compensation law, which arise out of or occur by reason of the exercise by the Company of the rights granted in this Franchise. The Company shall carry insurance to protect itself and the Town from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. The insurance policy shall specifically provide that the Town shall be named as an additional insured. The amounts of such insurance liability due to physical damage to property shall be not less than One Million Dollars (\$1,000,000) as to any one claim and not less than One Million Dollars (\$1,000,000) aggregate in any single policy year; and against liability due to bodily injury or to death of persons, not less than One Million Dollars (\$1,000,000) as to any one person, and not less than One Million Dollars (\$1,000,000) as to all such claims arising from any one accident. The Company shall also carry such insurance as it deems necessary to protect it and the Town from any and all claims under the workmen's compensation laws in effect that may be applicable to the Company. All insurance required by this Section shall be and remain in full force and effect for the entire period of this Franchise. The policies of insurance, or a certificate of

insurance evidencing such coverage, shall be filed with the Clerk of the Town.

#### SECTION 6. CONSTRUCTION STANDARDS.

(a) The Company shall equitably and reasonably extend the system so as to enable it to render service to all areas within the Town. The Company shall extend and make cable television service available to every dwelling unit in any new, annexed areas having the equivalent of at least 40 homes per street mile, as measured from the existing system.

(b) With regard to the Company's construction, operation and maintenance of its cable television system, the following standards shall apply:

(1) The construction, maintenance and use of the Company's cable television system shall comply with the standards for materials and engineering and all other provisions of the National Electrical Safety Code and the National Electric Code.

(2) The Town shall have the right to supervise all construction and installation work performed subject to the provisions of the Ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

#### SECTION 7. STREET VACATION OR ABANDONMENT.

In the event any street, alley, public highway or utility easement, or any portion thereof, used by the Company shall be vacated by the Town or the use thereof discontinued by the Company during the term of this Franchise, the Company shall forthwith remove its facilities therefrom unless specifically permitted to leave them there, and upon the removal thereof, restore, repair or reconstruct the street area where such removal has occurred in such condition as may be required by the Town. In the event of failure, neglect or refusal of the Company, after thirty (30) days written notice by the Town Council to repair, improve or maintain such street proportions, the Town may do such work or cause it to be done, and the cost thereof as found and declared by the Town shall be paid by the Company, and collection may be by Court action or otherwise.

#### SECTION 8. CONDITIONS ON STREET OCCUPANCY.

(a) Use. All transmission and distribution structures, lines and equipment erected by the Company within the Town shall be so located as to cause minimum interference with the proper use of all streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(b) Restoration. In case of any disturbances of pavement, sidewalk, driveway or other surfacing the Company shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed to as

good condition as before said work was commenced.

(c) Relocation. In the event that at any time during the period of this Franchise the Town shall lawfully elect to alter or change the grade or width of any street, alley or other public way, the Company, upon reasonable written notice by the Town, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other system fixtures at its own expense.

(d) Temporary Removal of Wire For Building Moving. The Company shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than one hundred twenty (120) hours advance notice to arrange for such temporary wire changes.

(e) Trimming of Trees. The Company shall have the authority to trim trees upon and overhanging any street, alley or other public way so as to prevent the branches of such trees from coming in contact with its wires, cables or other equipment.

#### SECTION 9. POLE USE.

(a) The Company shall, whenever possible and practicable, use the poles owned and maintained by the Town and/or the utility company(ies) which serve the Town. When the use of such poles is not practicable or satisfactory and rental agreements cannot be entered into with said parties, the Company shall have the right to erect and maintain its own poles, as may be necessary for the proper construction and maintenance of the television distribution system.

(b) In all sections of the Town where the cables, wires or other like facilities or public utilities are presently placed underground or are required to be so placed underground at any time in the future, the Company shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the Company to do so.

#### SECTION 10. REGULATION.

(a) The Company shall, while operating under this Franchise, maintain efficient cable television service in the Town. However, the Company shall not be liable for loss or damage caused by interruption or failure of service due to accident or breakdown to lines or equipment, strike, riot, act of God or the public enemy or such other causes as are beyond its control, or due to shutdowns for reasonable periods to make repairs to equipment; but the Company shall in such cases exercise proper diligence in repairing such equipment and resume operation of same without unnecessary delay.

(b) The Company has adopted, and the Town Council has approved procedures for the investigation and resolution of complaints regarding its cable television operations. Notice of the

procedures for reporting and resolving complaints shall be given to each subscriber at the time of initial subscription to the cable television system operated by the Company. The Company shall have an area business office or agent for the purpose of receiving notice of, investigating and seeing that proper steps are taken to effect the resolution of any problems relating to service or other aspects of its cable television operations. The area manager shall have primary responsibility for the continuing administration of the Franchise, and for the implementation of the procedures of this sub-section.

(c) The Town shall have access at all reasonable hours to all of the Company's plans, contracts, engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder.

(d) A copy of any and all rules, regulations, terms and conditions adopted by the Company for conduct of its business shall be filed with the Town Clerk; and a copy shall also be available for public inspection at the office of the Company.

(e) This Franchise shall not in any way be construed as a license or permit to the Company to engage in the sale or service of radio or television sets, appliances or parts.

#### **SECTION 11. EMPLOYMENT PRACTICES.**

Equal opportunity in employment shall be afforded all qualified persons by the Company, and no person shall be discriminated against because of race, color, religion, national origin or sex.

#### **SECTION 12. SERVICE TO COMMUNITY BUILDINGS AND SCHOOLS.**

The Company agrees to and shall furnish, without installation charge or monthly service fee, a free connection to the local Police Station facilities, and one connection to all Fire Houses and other building or buildings designated by the Town Council and to all public and parochial, elementary and secondary schools located within the Town, which are passed by the Company's cable television system.

The Company assures the Town that the cable system, once installed, will be equipped with a Community Alert System at a location designated by the Town to enable the communication of emergency information to all subscribers.

#### **SECTION 13. RATES.**

The rates or charges which the Company assesses its subscribers for cable television services shall be at all times fair and reasonable.

Changes in established rates for services, or the establishment of rates for services for which no rate has been established, or other amendment or changes of the schedule of charges of the Company to subscribers may be proposed from time to time by the Company in accordance with the

FCC's rate regulation procedures.

**SECTION 14. PAYMENT TO THE TOWN.**

(a) The Company shall pay to the Town, for and in consideration of the right and privilege to conduct cable television operations, pursuant to this Franchise, an annual fee in an amount equal to three percent (3%) of its monthly basis gross subscriber revenues derived from its cable television operations in the Town with each year's fee due and payable to the Town Clerk of the Town by March 31st for the preceding calendar year.

(b) In the event of revocation or termination of this Franchise, the final annual fee payment shall be prorated from the immediately preceding January 1st to the date of termination of service.

**SECTION 15. ASSIGNMENT, TRANSFER, LEASE OR MERGER.**

(a) This Franchise shall not be assigned, voluntarily or by operation of law, nor shall control of the Company be transferred without the prior approval of the Town Council.

(b) Nothing in this Franchise shall prohibit the mortgage or the pledge of any property of Company, real or personal, including the cable system or any part thereof, or this Franchise, or a leasing by Company from another person of said property or part thereof for financing purposes or otherwise.

**SECTION 16. FORFEITURE OF FRANCHISE.**

(a) The Town may declare a forfeiture of this Franchise and revoke the same in the event the Company:

(1) Substantially violates any provision of this Ordinance, where such violation remains uncured for a period of thirty (30) days subsequent to receipt by the Company of a written notice of such violation except where such violation is not the fault of the Company or is due to excusable neglect; or

(2) Practices any fraud or deceit upon the Town.

(b) Such forfeiture shall be declared by any ordinance of the Town Council duly adopted after thirty (30) days written notice to the Company, and shall in no way affect any of the Town's rights under this Franchise or any provision of law, provided, however, that before the Franchise may be terminated and canceled under this Section, except for nonpayment of monies due to the Town from the Company, the Company shall be provided with an opportunity to be heard at a hearing before the Town Council upon ten (10) days written notice to the Company of the time and place of the hearing.

SECTION 17. MISCELLANEOUS.

Failure to enforce or insist upon compliance with any of the terms or conditions of this Ordinance shall not constitute a general waiver or relinquish of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

SECTION 18. SEPARABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or other governmental authority of competent jurisdiction, such section shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 19. WRITTEN ACCEPTANCE.

The Company shall within twenty (20) days after this Ordinance becomes effective, file in the office of the Town Clerk of the Town, a written acceptance of this Ordinance. Failure on the part of the Company to file such written acceptance within such time shall be deemed an abandonment and rejection of the right conferred hereby, and this Ordinance shall thereupon be null and void. Said acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Ordinance.

SECTION 20. EFFECTIVE DATE.

The effective date of this Franchise shall be twenty (20) days after the passage and approval of this Ordinance.

ADOPTED THIS 14 DAY OF JULY, 1997, BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, INDIANA.

Voting For

Michael McBrat  
John Huston  
Chris Mikes

Voting Against

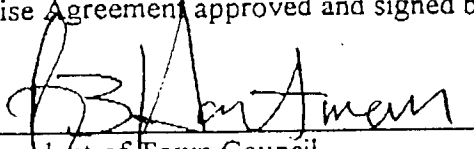
Mary Rogers

Abstain

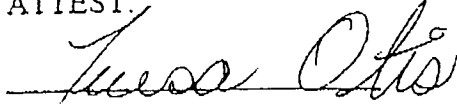
ATTEST:

Lisa A. Otis  
 Clerk-Treasurer

The above and foregoing Franchise Agreement approved and signed by me, this 14 day of July, 1997.

  
President of Town Council

ATTEST:



The undersigned Grantee of a Franchise for a cable television system for Westfield, Indiana, does hereby accept the grant of said Franchise and agrees to be bound by the terms and conditions contained therein.

Insight Communications Lessee, L.P. by its  
General Partner, ICC Associates, L.P. by its  
General Partner, Insight Communications, Inc.

By: 

James A. Stewart, Jr.

Title: Senior Vice President of Operations

ATTEST:

